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.4 Filing an Appeal and Developing the Record

.41 A group home provider/foster family agency that does not concur with the decision letter set forth in Section 11-430.36 and requests a different rate shall file a written appeal with the Department within 60 days of receipt of the decision letter. The date of mailing of the appeal shall establish the filing date.

.411 A position statement shall be submitted with the appeal and shall include:

- (a) A specific statement of disputed issues.
- (b) The relevant facts of the case.
- (c) The legal authority supporting the position of the group home provider/foster family agency.
- (d) A copy of all supporting documents and exhibits which are to be offered into evidence.

.412 The written appeal shall specify whether the group home provider/foster family agency is requesting an oral administrative hearing, or an administrative hearing based upon the written record developed in accordance with Section 11-430.42 without the taking of oral testimony or oral argument.

.413 The appeal shall be submitted, via certified mail, domestic receipt requested, to the office and address specified in the decision letter. At the same time, a copy shall be mailed, via certified mail, domestic receipt requested, to:

California Department of Social Services
Foster Care Rates Bureau
744 P Street, M.S. 19-74
Sacramento, CA 95814

.414 The request for appeal shall specify whether or not the group home provider/foster family agency desires that an informal conference be held.

- (a) If an informal conference is requested, the reasons for the informal conference shall be included with the request for appeal.
- (b) If the Administrative Law Judge determines that an informal conference is appropriate, it shall be ordered and scheduled as soon as reasonably possible. The Administrative Law Judge shall preside at this informal conference.

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- (c) The Administrative Law Judge shall provide written notice of the date, time, and place of the informal conference which shall be mailed to each party at least 10 days before the date of the informal conference. This period may be shortened with the consent of the parties. Any party may waive notice.
- (d) Efforts shall be made to resolve the facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law.

.42 Developing the Written Record.

- .421 Within 60 days of receipt of an appeal of a rate setting protest decision letter, the Department shall submit its response to the appeal. The response shall include:
 - (a) A specific statement of disputed issues.
 - (b) The relevant facts of the case.
 - (c) The legal authority supporting the Department's position.
 - (d) A copy of all supporting documents and exhibits which are to be submitted into evidence.
- .422 The Department's response shall be submitted by personal delivery or certified mail, domestic receipt requested, to the office and address specified in Section 11-430.413. At the same time, the Department shall mail a copy via certified mail, domestic receipt requested, to the group home provider/foster family agency.
- .423 The group home provider/foster family agency may submit a written rebuttal to the Department's response within 30 days of the receipt of the Department's response. The rebuttal shall be submitted as set forth in Section 11-430.413.
- .424 The Department may submit a written rebuttal to a rebuttal filed by the group home provider/foster family agency within 30 days of the receipt of the rebuttal. The Department's rebuttal shall be filed as set forth in Section 11-430.422.
- .425 The Administrative Law Judge may allow at a party's request, or require on his/her own motion, additional information or argument from any party. The other party shall be provided a reasonable opportunity, as determined by the Administrative Law Judge, to respond to such additional submission.

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- .426 The written record shall include the documents discussed in Sections 11-430.41 through 11-430.425, all applicable laws and regulations, and those matters of which the Administrative Law Judge takes official or judicial notice. (When an oral administrative hearing is conducted, additional record material submitted for that administrative hearing will subsequently be included.)
- .43 When the administrative hearing is to be conducted without an oral administrative hearing, the record shall be closed and the parties notified when the Administrative Law Judge determines that the record is complete. The Administrative Law Judge shall conduct the administrative hearing upon the written record within 180 days after filing the appeal of the rate protest decision letter.
- .44 The following shall occur when an oral administrative hearing has been requested:
 - .441 A written notice of the date, time and place of the oral administrative hearing shall be mailed to each party at least 30 days prior to the date of the oral administrative hearing. This period may be waived by any party or shortened with the consent of all parties. The notice to the group home provider/foster family agency shall be sent by certified mail, return receipt requested.
 - .442 The oral administrative hearing shall be conducted within 180 days after the filing of an appeal by the group home provider or foster family agency.
 - .443 The Administrative Law Judge shall determine the date, time, and location of the oral administrative hearing to be held within Sacramento County, unless a different location is ordered by the Administrative Law Judge based upon the needs of a particular appeal.
- .5 Procedures Applicable to All Formal Administrative Hearings.
 - .51 The Administrative Law Judge on his/her own motion or the motion of any party may:
 - .511 Extend any time period in these appeal regulations for good cause, except the time period set forth in Section 11-430.41 for the filing of an appeal.
 - .512 Consolidate for an administrative hearing or decision any number of issues or appeals when the facts and circumstances are similar and no substantial right of any party is prejudiced.

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- .513 Join other parties, grant continuances, and hold additional administrative hearings, as necessary.
- .514 Hear any issue before any other issue in the proceeding if the decision on that issue could abate further proceedings.
- .515 Question any party or witness.
- .516 Prepare a proposed decision for the Director on any separately heard issue.
 - (a) Postpone hearing any remaining issues until a final decision has been submitted on any separately heard issues.
- .517 Require any party to submit written memoranda pertaining to any or all issues.
- .518 Dismiss the appeal if the group home provider/foster family agency fails to proceed with the administrative hearing process or fails to appear at an oral administrative hearing.
 - (a) A copy of such dismissal shall be mailed to each party with a statement of the group home provider/foster family agency's right to request that the administrative hearing be reopened. Notice to the group home provider/foster family agency shall be sent by certified mail, return receipt requested.
 - (b) The Administrative Law Judge may vacate any dismissal if the group home provider/foster family agency applies in writing, within 10 calendar days after receipt of such dismissal, and shows good cause for failure to proceed or to appear at the administrative hearing. Lack of good cause shall be inferred if a continuance of the administrative hearing is not requested promptly upon discovery of the reason(s) for failure to proceed or appear at the administrative hearing.
 - (c) The parties shall be given written notice of an order granting or denying any application to vacate a dismissal. Notice to the group home provider/foster family agency shall be sent by certified mail, return receipt requested.
- .52 In order to obtain additional evidence, the Administrative Law Judge may:
 - .521 Continue the administrative hearing and hold the record open for any party to produce additional evidence.
 - .522 Close the administrative hearing and hold the record open for the introduction of additional documentary evidence.

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- (a) Material submitted after the close of the administrative hearing shall be provided to each party and to the Administrative Law Judge.
 - (b) The other party shall have the opportunity to respond to additional material submitted by a party.
- .523 If the nature of the additional evidence or the rebuttal warrants, order an additional administrative hearing.
- .524 Reopen the record on his/her own motion.
- .53 An Administrative Law Judge may refuse to allow any person to represent a party in an administrative hearing when the person:
 - .531 Engages in unethical, disruptive, or contemptuous conduct.
 - .532 Intentionally fails to comply with the instructions or orders of the Administrative Law Judge or the administrative hearing procedures.
- .54 The administrative hearing need not be conducted according to technical rules relating to evidence and witnesses, except as provided in these regulations.
 - .541 Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
 - (a) Hearsay evidence shall be permitted to be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions.
 - (b) The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized under California law in civil actions.
 - (c) Irrelevant, cumulative or unduly repetitious evidence may be excluded by the Administrative Law Judge.
 - (d) A duplicate is admissible to the same extent as an original unless:
 - (1) A genuine question is raised as to the authenticity of the original or the duplicate.

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- (2) It would be unfair to admit the duplicate in lieu of the original.
- .542 The Administrative Law Judge shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the California Evidence Code, and may take official notice of those matters which may be judicially noticed by a court under Section 452 of the California Evidence Code.
- (a) The parties to the administrative hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record.
- (b) Each party shall be given a reasonable opportunity, upon request, to refute the officially noticed matters.
- .55 Procedures Governing Subpoenas
- .551 Before the administrative hearing has commenced, the agency or the assigned Administrative Law Judge shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the administrative hearing. Subpoenas and subpoenas duces tecum shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. After the administrative hearing has commenced, the Administrative Law Judge may issue subpoenas and subpoenas duces tecum.
- .552 The process issued pursuant to Subdivision (a) shall be extended to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend the administrative hearing unless the witness is a resident of the state at the time of service.
- .553 All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court (Government Code Section 68093 provides for fees of \$35 per day and mileage at \$.20 cents a mile, round trip.). Witnesses appearing pursuant to subpoena, except the parties, who attend administrative hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of three dollars (\$3) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the administrative hearing. Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

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.6 Additional Procedures Applicable to Oral, Formal Administrative Hearings

- .61 Within 15 days after receipt of the written notice that the case has been calendared for an oral administrative hearing, each party shall mail or deliver to the other parties and the Administrative Law Judge:
 - .611 The names and addresses of witnesses, including but not limited to, those intended to be called to testify; and
 - .612 A copy of all written documents and exhibits which are to be offered into evidence and which were not previously made a part of the record.
 - (a) An explanation shall be included of why the evidence was not previously provided. Unless good cause is shown, or the other party concurs in the submission, the Administrative Law Judge may exclude such evidence. If the evidence is allowed, the Administrative Law Judge may provide the other party additional time to respond to such evidence.
- .62 Any party proposing to object to the receipt in evidence of any proposed exhibit shall advise the presenting party of such objection prior to the commencement of the administrative hearing.
 - .621 All parties shall confer with respect to any objections in advance of the administrative hearing and attempt to resolve them.
- .63 A party appearing at an administrative hearing shall have the necessary evidence and witnesses present and be ready to proceed.
- .64 Testimony shall be taken on oath, or affirmation, under penalty of perjury.
- .65 The administrative hearing shall be electronically recorded, or perpetuated by other means capable of reproduction and transcription.
- .66 Each party shall have the right to:
 - .661 Call and examine parties and witnesses;
 - .662 Introduce documents or exhibits;
 - .663 Question opposing witnesses and parties on any matter relevant to the issues even though the matter was not covered in the direct examination;

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- .664 Impeach any witness regardless of which party first called the witness to testify; and
- .665 Rebut the evidence.
- .666 The group home provider/foster family agency shall not be called to testify during the Department's initial presentation pursuant to Section 11-430.671. A group home provider/foster family agency who thereafter fails to testify in its own behalf, may be called and examined as if under cross examination.
- .67 Subject to the discretion of the Administrative Law Judge, the order of the presentation of evidence shall be as follows:
 - .671 The Department shall present its case first.
 - .672 Once the Department has completed its case, the group home provider/foster family agency shall present its case.
 - .673 The Department shall have the opportunity to rebut the group home provider's/foster family agency's evidence.
 - .674 The group home provider/foster family agency shall have the opportunity to rebut the rebuttal presented by the Department.
- .68 The administrative hearing shall be conducted in the English language.
 - .681 The proponent of any testimony to be offered by a witness who does not speak the English language proficiently shall provide an interpreter, approved by the Administrative Law Judge as proficient in the English language and the language in which the witness will testify.
 - (a) The cost of the interpreter shall be paid by the party providing the interpreter.
 - (b) The interpreter shall swear or affirm that he/she shall translate truthfully, accurately, and completely.
- .69 The Administrative Law Judge shall grant oral and may grant written argument at the request of any party made prior to the close of the administrative hearing.
 - .691 The Administrative Law Judge shall advise the parties of the time and manner in which the written argument is to be filed.

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.7 Decision Process

- .71 A proposed decision in a format that may be adopted as the decision of the Director shall be submitted to the Director within 180 days after the closure of the record.
- .72 Within 120 days after submission of the Administrative Law Judge's proposed decision, the Director shall:
 - .721 Adopt the proposed decision with or without reading or hearing the record.
 - .722 Reject the proposed decision and adopt an alternative decision based upon the documentary and electronically recorded record, with or without taking additional evidence.
 - .723 Refer the matter to the same or a different Administrative Law Judge to take additional evidence.
 - (a) If the case is so assigned, the Administrative Law Judge shall, within 90 days, prepare a proposed decision, based upon the additional evidence and the documentary and electronically recorded record of the prior administrative hearing. The Director may then take one of the actions described in Section 11-430.72 in regard to the new proposed decision. The Director may return a proposed decision only twice on the same appeal.
- .73 The decision shall be final when the decision is mailed to the parties. However, the Director retains jurisdiction to correct clerical errors.
 - .731 Copies of the final adopted decision, or the decision of the Director and the Administrative Law Judge's proposed decision if it was not adopted by the Director, shall be mailed to the parties. Notice to the group home provider/foster family agency shall be sent by certified mail, return receipt requested.
- .74 The group home provider/foster family agency shall be permitted to request a review of the final decision of the Department in accordance with Section 1094.5 of the Code of Civil Procedure, within six months of the issuance of the Director's final decision.

| NOTE: Authority cited: Sections 10553, 10554, 11462, 11462.01, 11466.4, and 11468, Welfare and Institutions Code. Reference: Sections 11462.01(b)(2)(A)(i), 11462.01(b)(3), 11466.4, 11466.6, 11468, 11468.1, 11468.2, 11468.3, 11468.4, 11468.5, and 11468.6, Welfare and Institutions Code; and Sections 11510, 11512, and 11513, Government Code.

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CHAPTER 11-500 PROGRAM STANDARDS - INCOME MAINTENANCE

11-501 INCOME MAINTENANCE RESPONSIBILITIES 11-501

.1 Eligibility and Grant Decisions

Income maintenance staff shall be continuously responsible for making decisions on eligibility and maintaining correctness of grant on all public assistance cases, whether in service status or not. These include: initial determinations and redeterminations of eligibility; determination of subsistence needs; computation of grants, and share of cost (for MN); change actions on grants; movement between categorical programs; eligibility for supplemental food programs.

.2 Recording

The county welfare director shall assure that records are maintained by income maintenance staff which document the basis for eligibility decision and the amount of grant or share of cost (for MN). Such recording need not be in narrative form and should be entered on forms to the extent possible.

.3 County Standards

Where statutes or CDSS regulations authorize counties to adopt specific standards which affect an applicant's/recipient's eligibility or grant amount or welfare-to-work activities, including supportive services, such standards shall be in writing and shall be made available to the public upon request.

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Examples of program requirements for which counties are to develop written standards include but are not limited to the following: (1) definition of what constitutes regular school attendance and good cause criteria, under Sections 40-105.5(a) and (f); (2) extending the work exemption based upon caring for a young child, under Section 42-712.47; (3) diversion program requirements, under Section 81-215.32; (4) child care for other required activities or for children not in the AU, under Sections 47-201.12 and 47-401.45; and (5) continuing case management services and/or supportive services for former recipients, under Section 42-717.1.

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NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10603, Welfare and Institutions Code.

11-503 STAFFING STANDARDS**11-503**

The number of eligibility worker and eligibility supervisor positions necessary to assure maintenance of acceptable performance levels in the income maintenance and quality control functions shall be determined by the county, taking into account the availability of clerical and other supportive processes, and shall be submitted in the county plan subject to approval by State Department of Social Services (SDSS) as standards which the county will maintain.

Maintenance of acceptable performance levels shall be measured by taking into consideration the findings of the quality control system, promptness in processing applications and paying aid, currency of reinvestigations, appropriateness of identification and referral of persons for service assessment, and such other factors as SDSS shall establish as appropriate indicators of performance.

- .1 The use of aides is specified in Welfare and Institutions Code Section 10810.

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- .11 Welfare and Institutions Code Section 10810 states:

Subject to the approval to the Department, each county department is authorized to sponsor and conduct programs for the recruitment, training, and utilization of volunteers to assist county department employees in the performance of office duties and to aid in performing services in the counties including but not limited to the following:

- (a) Friendly visiting of the indigent aged;
- (b) Finding homes for foster children;
- (c) Escorting and transporting recipients to clinics and other destinations;
- (d) Aiding in location of improved housing;
- (e) Teaching homemaking skills and aiding in budgeting and care of the household;
- (f) Providing tutoring and other educational aid.

Volunteers shall not duplicate services performed by county department employees.

The county department shall maintain the confidentiality of records of recipients.

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**ADMINISTRATIVE STANDARDS FOR ELIGIBILITY AND ASSISTANCE PROGRAMS
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CHAPTER 11-600 LAWSUITS INVOLVING MULTIPLE PROGRAMS

11-601 BLANCO V. ANDERSON LAWSUIT

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.1 Background

The Blanco v. Anderson lawsuit challenged the closure of county welfare department (CWD) offices during regular business hours except Saturdays, Sundays, and legal holidays.

The initial decision, issued on December 16, 1993, addressed only the closure of CWD Food Stamp offices without first having completed a review of the office hours of operation as required by federal regulations at 7 CFR 272.4(g). Emergency state regulations implementing the specific federal regulatory requirements for the required annual office hours review were effective June 1, 1994.

The final judgment, issued December 20, 1994, and amended January 3, 1995, finds that by allowing CWDs to close their offices during the "regular eight hours of the working day," class members have been denied their right to apply for and receive Food Stamp, AFDC, homeless assistance, and Medi-Cal benefits. The court ordered that when the CWDs are closed during the regular eight hours of the working day, they must do the following. They must make it possible for individuals to apply for and receive Food Stamp, AFDC, and Medi-Cal benefits, including emergency benefits, within the time limits prescribed by state and federal law. The CWDs must also provide notice of their hours of operation and of the procedures, during these hours of closure, for applying for and receiving these benefits, including emergency benefits.

These regulations implement the December 20, 1994 judgment as amended January 3, 1995.

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.2 Definitions

.21 For purposes of these regulations, the following apply:

.211 "Accept and act upon all applications for emergency benefits" includes providing such emergency benefits within the time limits prescribed by federal and state law.

.212 "Local telephone service" means a telephone number which is toll-free for the same geographic area as the regular telephone number for each CWD office.

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.213 "Opportunity to file an application for benefits" includes the provision of special assistance under 7 CFR 273.2(e) and (f) (see Sections 63-300.4 and .5) and 45 CFR 233.10(a)(10)(vi) (see Section 40-157.213).

(a) "Special assistance" means assisting the applicant as necessary in order to provide emergency benefits within the time limits prescribed by federal and state law, including waiving the face-to-face office interview, conducting the application interview by telephone, and assisting the applicant in gathering needed documents.

.214 "Regular eight hours of a working day" means the eight-hour period the CWD's offices are open to the public. If the CWD office is never open eight hours on a working day, the "regular eight hours of the working day" shall mean the hours that the CWD office is open, plus an additional time period(s) immediately before, after, or between these hours, which cumulatively equal eight hours.

.215 "Working days" means Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, excluding federal and state holidays.

.3 County Responsibilities

.31 If a CWD closes its offices at any time during the regular eight hours of a working day, the CWD shall do all of the following during those hours of office closure:

.311 Provide individuals the opportunity to file an application for and receive Food Stamp and/or AFDC benefits within the time limits prescribed by federal and state law.

(a) Make applications for such benefits readily available to individuals.

(b) Provide a drop-box, mail slot, or other reasonable means for filing applications.

11-601	<u>BLANCO V. ANDERSON</u> LAWSUIT (Continued)	11-601
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- (1) Applications deposited as described in Section 11-600.311(b) shall be deemed to have been filed on the date of the CWD office closure.
 - (2) In the event an individual certifies he/she was denied the opportunity to file an application, and the CWD does not have evidence to the contrary, the application shall be processed in all respects as though it was filed on the date of the CWD office closure.
- .312 Provide individuals the opportunity to file an application for and receive expedited Food Stamp, immediate need AFDC, and/or homeless assistance benefits within the time limits prescribed by federal and state law.
 - (a) Maintain sufficient staff to accept and act upon all such applications, and/or
 - (b) Maintain a local telephone service with sufficient staff to accept and act upon all such applications as if such requests had been made in person at the CWD's office.
- .313 Greet incoming calls on the main telephone lines of the CWD's offices with an announcement informing the caller of the following:
 - (a) The working days, or regular eight hours of a working day, when the offices will be closed;
 - (b) The procedures for obtaining and filing applications for Food Stamp and AFDC benefits, during these hours of office closure; and
 - (c) The procedures for applying for and receiving expedited Food Stamp, immediate need AFDC, and homeless assistance benefits, within the time limits prescribed by federal and state law, during these hours of office closure.

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- (d) CDSS and the Department of Health Services are enjoined by court order in the Blanco v. Anderson lawsuit. The court order includes provisions for providing services to clients under Medi-Cal as well as Food Stamp and AFDC programs. The order requires that telephone announcements greeting incoming calls informing the public of the provisions specified in Sections 11-601.313(a), (b), and (c) include information regarding Medi-Cal and emergency medical services.

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- .314 Post notices in prominent locations within the CWD's offices and in the public areas, including the doors, immediately outside the CWD's offices which inform the public of the following:
- (a) The working days, or the regular eight hours of a working day, when the offices will be closed;
 - (b) The procedures for obtaining and filing applications for Food Stamp and AFDC benefits during these hours of office closure; and
 - (c) The procedures for applying for and receiving expedited Food Stamp, immediate need AFDC, and homeless assistance benefits within the time limits prescribed by federal and state law, during these hours of office closure.

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- (d) CDSS and the Department of Health Services are enjoined by court order in the Blanco v. Anderson lawsuit. The court order includes provisions for providing services to clients under Medi-Cal as well as Food Stamp and AFDC programs. The order requires that notices posted by the CWD offices informing the public of the provisions specified in Sections 11-601.314(a), (b), and (c) include information regarding Medi-Cal and emergency medical services.

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NOTE: Authority cited: Sections 10553, 10554, and 18904, Welfare and Institutions Code. Reference: Section 18902, Welfare and Institutions Code; Blanco v. Anderson Court Order, United States District Court, Eastern District of California, No. CIV-S-93-859 WBS, JFM, dated January 3, 1995.

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TAX REFUND INTERCEPT REGULATIONS**

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**CHAPTER 11-700 FRANCHISE TAX BOARD (FTB) AND INTERNAL REVENUE SERVICE (IRS)
TAX REFUND INTERCEPT REGULATIONS**

| Renumbered to Chapter 12-700 by Manual Letter No. OPS-90-05, effective 11/26/90.

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| Renumbered to Section 12-703 by Manual Letter No. OPS-90-05, effective 11/26/90.

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